

AMENDMENT NO. \_\_\_\_\_

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Signature of Sponsor

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

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by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 41-24-102(2), is amended by deleting subdivision (F) in its entirety and substituting instead the following:

(F) Operation of facilities; including management, staffing, security supervision and custody of inmates, and providing a safe and secure confinement of inmates;

SECTION 2. Tennessee Code Annotated, Section 41-24-102, is amended by deleting Subdivision (5) in its entirety and substituting instead the following:

“Prison contractor” or “contractor” means any entity including a county, municipality, and private company entering into a contractual agreement to provide correctional services to inmates under the custody of the department.

SECTION 3. Tennessee Code Annotated, Section 41-24-103, is amended by deleting the section in its entirety and substituting instead the following:

(a) The commissioner may enter into contracts for correctional services as provided in this chapter. In addition, the provisions of §12-4-109(a) and §12-4-110 shall apply to a contract for correctional services. The commissioner of correction shall execute such contract, and the commissioner of finance and administration and the comptroller of the treasury shall approve such contract.

(b) The commissioner shall determine which correctional services shall be contracted to prison contractors and which correctional services are to remain with the department.

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(c) The commissioner may execute contracts to restructure the operation of facilities to make them more efficient, to close inefficient facilities, to renovate or make capital improvements to facilities, and to construct new facilities.

(d) Any inmate sentenced to confinement in the department may be incarcerated in a facility in which a prison contractor is providing correctional services pursuant to this chapter.

SECTION 4. Tennessee Code Annotated, Section 41-24-104, is amended by deleting the section in its entirety and substituting instead the following:

(a) A request for proposals for correctional services, as defined in §41-24-102(2)(F), or a contract for correctional services, as defined in §41-24-102(2)(F), or an amendment to such contract, may be issued or entered into only after each of the following conditions has been met:

(1) The commissioner shall submit any proposed request for proposals to the select oversight committee on corrections at least forty-five (45) days before its issuance. The committee may review and make comments on the proposed request for proposals. The commissioner is encouraged to consider the committee's comments, if any, in making decisions.

(2) The state building commission shall approve any proposed contract for correctional services or an amendment to such contract. The commissioner shall submit any proposed contract or amendment thereto to the select oversight committee on corrections to permit committee review before presenting the

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contract to the state building commission. The committee may review and make comments on the proposed contract or amendment thereto within forty-five (45) days of receipt by the committee staff. The commission is encouraged to consider the committee's comments, if any, in making decisions.

(3) In addition, each of the following committees shall review for not more than forty-five (45) days any request for proposals, any proposed contract, or an amendment to such contract:

(A) Fiscal review committee;

(B) Senate state and local government committee; and

(C) House state and local government committee;

(4) The attorney general and reporter shall approve any contract for correctional services, as defined in §41-24-102(2)(F), or amendment thereto for conformity with state law.

(b) A contractor shall be given flexibility in the design, construction and operation of correctional facilities to promote innovation and efficiency in operations and cost effectiveness in facilities consistent with appropriate safety and security and sound correctional practices and standards. The commissioner shall insure that any restructuring of the state corrections system is accomplished in such a manner as to ensure a quality and design that the state, if necessary, can assume the facilities' management and operation.

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(c) The commissioner may issue a request for proposals for one (1) or more prison contractors to operate adult facilities, to restructure their operation to make them more efficient, to close inefficient facilities, to renovate or make capital improvements to facilities, and to construct new facilities. In issuing a request for proposals, the commissioner may issue proposals for geographical regions of the state, for types of facilities or for all adult facilities. The commissioner may reject any or all proposals for any reason.

(d) The commissioner may enter into a contract only if a proposal complies with the provisions of this chapter and only if:

(1)(A) The commissioner finds that contracting for the operation of the facilities and for the restructuring of the affected institutions will save a significant amount of state funds compared to the present cost to the state of the operation of its facilities; and

(B) For the purpose of making the comparison required by this subdivision, the contractor's cost shall include the state's cost of monitoring contractor performance under §41-24-109; and

(2) All state employees employed at a facility subject to a contract are offered jobs by the contractor upon meeting the following two (2) conditions:

(A) Satisfactory passage of an employee drug test; and

(B) No felony conviction in the past five (5) years; and

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(3) The jobs provided to state employees are at salaries and benefits that are equal to or better than what they receive as state employees. The contractor shall provide health care coverage beginning with the first day of employment. Such coverage shall be equal to or better than the coverage the employees are receiving as state employees and shall include coverage of any pre-existing conditions. The commissioner may hire an independent benefit consultant to advise it on the equivalency of the benefits offered by the contractor.

(e) The South Central Correctional Facility shall not be included in a contract for the operation of any other institution until the existing management contract for operations expires.

SECTION 5. Tennessee Code Annotated, Section 41-24-105, is amended by deleting the section in its entirety and substituting instead the following:

(a) For any contract to provide correctional services as defined in §41-24-102(2)(F), the contract term shall not exceed three (3) years.

(b) The initial contract may include an option to renew for an additional period of two (2) years.

(c) To be considered for the award of a contract to operate facilities as defined by §41-24-102(2)(F), the contractor shall demonstrate that it has:

(1) The qualifications, operations and management experience and experienced personnel necessary to carry out the terms of the contract;

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(2) The ability to comply with applicable correctional standards and specific court orders, if required; and

(3) A demonstrated history of successful operation and management of other correctional facilities.

(d) Any request for proposals, any proposals, any original contract, any contract renewal, or amendment to any contract, for the operation of facilities as defined by Section 41-24-102(2)(F) shall include a description of the following terms and conditions or shall include a reference to the following terms and conditions that remain unchanged by such proposal, contract, or contract renewal or amendment:

(1) Proposer qualifications;

(2) Selection and award process;

(3) Detailed Scope of Contract Services and Requirements;

(4) Detailed Scope of State Services and Requirements;

(5) Contract time frames, duration and renewals;

(6) Safety and security requirements;

(7) Detailed financial requirements, terms and conditions, reporting and auditing process; and

(8) Contract compliance, monitoring, and evaluation requirements and process.

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SECTION 6. Tennessee Code Annotated, Section 41-24-106, is amended by deleting from subdivision (1) the language “the prison” and substituting instead the language “an affected facility”.

SECTION 7. Tennessee Code Annotated, Section 41-24-111, is amended by deleting the section in its entirety.

SECTION 8. Tennessee Code Annotated, Section 41-24-112, is amended by deleting the section in its entirety and substituting instead the following:

(a) Any prison contractor awarded a contract for correctional services as defined in §41-24-102(2)(F) shall establish and maintain a retirement plan for department of correction employees who were in positions under the control and supervision of the department and who are members of the Tennessee consolidated retirement system immediately preceding the contract implementation date. Such retirement plan shall provide substantially the same death, disability and retirement benefits as provided for Group 1 state general employees under the laws governing the Tennessee consolidated retirement system as they exist on the contract implementation date, including the noncontributory provisions of §8-34-206 and the cost-of-living benefit provisions of §8-36-701. The actuarial firm utilized by the Tennessee consolidated retirement system may be retained to make such comparison of benefits.

(b) Upon any such employee’s separation from service with the contractor, the contractor shall compute the death, disability or retirement benefit, if any, payable to, or on account of, such employee under the provisions of the Tennessee consolidated retirement system as they existed on the contract implementation date. In calculating any such benefit, the

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contractor shall use all years of creditable service such employee had in the Tennessee consolidated retirement system immediately preceding the contract implementation date, plus all years of service the employee rendered to the contractor after such date. All earnable compensation received by the employee from the state immediately preceding the contract implementation date and all earnable compensation received by the employee from the contractor after such date shall be used in determining the employee's average final compensation pursuant to §8-34-101(4).

(c) The retirement, death or disability benefit payable by the contractor shall be equal to the benefit calculated under subsection (b) above, minus any benefit which is, or would have been, payable by the Tennessee consolidated retirement system based upon the employee's years of creditable service and average final compensation under the retirement system at the time of the contract implementation date. If, on the contract implementation date, the employee does not have the minimum years of service necessary under the retirement system to be eligible for a retirement, death or disability benefit under the laws governing the Tennessee consolidated retirement system, the contractor shall pay the entire benefit calculated under subsection (b) above.

(d) Any employee described herein may request a refund of that employee's accumulated contributions from the Tennessee consolidated retirement system at any time after the contract implementation date. Upon receipt of a refund, the employee's membership in the Tennessee consolidated retirement system shall terminate and the employee shall be deemed to have waived all rights in the retirement system. Provided, however, any such refund shall not

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increase nor decrease the amount payable by the contractor under subsection (c) above. In calculating the benefit under subsection (c) above, the contractor shall calculate the amount of the benefit which would have been payable by the Tennessee consolidated retirement system had the employee not obtained a refund.

(e) In lieu of receiving a refund from the Tennessee consolidated retirement system, the employee may leave the contributions in the system and continue to be credited with interest as provided in title 8, chapters 34-37. The employee may apply for a retirement allowance from the Tennessee consolidated retirement system upon meeting the eligibility conditions for such an allowance. The employee's retirement allowance from the retirement system shall be computed and paid in accordance with the provisions of title 8, chapters 34-37.

(f) Any employee described herein may elect not to be covered by the retirement plan established by the contractor under this section. Such election must be in writing and submitted to the contractor within ninety (90) days of the effective contract implementation date. Only those employees electing not to be covered under this section shall be eligible to participate in another retirement plan offered by the contractor to its employees.

(g) Any prison contractor awarded a contract for correctional services as defined in § 41-24-102(2)(F) shall also establish and maintain an insurance plan for employees described herein who are retired and who are drawing benefits pursuant to a retirement plan established by the contractor pursuant to this section. Such insurance plan shall provide substantially the same benefits package afforded to retired state employees pursuant to title 8, chapter 27 as such package exists on the contract implementation date.

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(h) If a contract for correctional services as defined in §41-24-102(2)(F) is terminated for any reason and the contract is awarded to a subsequent prison contractor, the prison contractor shall establish and maintain a retirement plan and a retiree insurance plan for all employees of the prior prison contractor who are covered by the provisions of this section. Such plans shall meet all the terms and conditions of this section.

(i) The Tennessee consolidated retirement system is expressly authorized to provide to prison contractors such information concerning employees described herein as may be within the retirement system's possession or control, and to otherwise cooperate with prison contractors to assist them in complying with the provisions of this section.

(j) Neither the state of Tennessee nor the Tennessee consolidated retirement system shall, as a result of any contract entered into under this chapter, be liable for benefits beyond those benefits otherwise provided for other members of the Tennessee consolidated retirement system, nor shall the state or the Tennessee consolidated retirement system assume or incur any liability for any impairment, interruption, or diminution of the rights and privileges of any employee which may result from a contract entered into under this chapter.

SECTION 9. Tennessee Code Annotated, Section 41-24-113, is amended by deleting subsections (a) and (b).

Tennessee Code Annotated, Section 41-24-113, is further amended by designating subsection (c) as subsection (a), and by adding the following new subsection:

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(b) Nothing in this chapter shall in any way limit the rights of the employees of the contractor to join together for the purpose of collective bargaining as described in Section 7 of the National Labor Relations Act.

SECTION 10. Tennessee Code Annotated, Section 41-24-115, is amended by deleting the section in its entirety.

SECTION 11. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 12. This act shall take effect upon becoming a law, the public welfare requiring it.

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